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SHORT REMARKS

ON

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MR. TWINING'S OBSERVATIONS

ON THE

QUESTION

TO BE BALLOTTED FOR

AT THE

EAST-INDIA-HOUSE,

JANUARY 14, 1795.

By SAMUEL TOLFREY,

A PROPRIETOR OF INDIA STOCK,

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SHORT REMARKS, &c.

IT is not my intention to complain of the lateness of Mr. Twining's Publication—it does not appear to me, that the *arguments* therein stated, have either novelty or importance enough to have made it material that it should have been published sooner. I do not say this out of any disrespect to Mr. Twining's abilities, for I think it arises from the subject on his side of the question being nearly exhausted in his former Publication, and in the course of the Debate at the last General Court of Proprietors. This, I hope, I shall be able to make evident by a few short references from Mr. Twining's present Publication to his first Pamphlet, and to Mr. Woodfall's account of the Debate.

His present Publication is, however, not destitute of novelty. It is rather novel for a Gentleman, in a Pamphlet, which, though not by its Title, yet by the course of its Publication, must

be intended as a reply, to repeat his former arguments without noticing the answer that has been given to them; for if the arguments of his opponents were immaterial, there was no occasion for any reply; if they were material, the reply which omits them serves only to establish their validity. There is novelty likewise in another respect: assertions are now brought forward which are not only new, but rather unexpected, considering the antecedent testimony to which I shall shew they are opposed, and still more so, as some of them are perfectly inconsistent with Mr. Twining's own former statement. These assertions being, at the same time, in contradiction to the account which I have published, seem to require some answer from me, and will, I trust, be my Apology for troubling the Proprietors with any thing further on the subject.

I shall take the liberty of pursuing a different course from that which Mr. Twining has followed in his Observations, adverting first to his Arguments, and then to his Assertions. His Arguments I shall soon dismiss, because, as they are merely repetitions, except in one instance, of the grounds of his former Pamphlet, and renewed, as I have before observed, without any reply to the answers given to them, it will be sufficient to point this out, and to refer to these Answers.

The

The first argument, (Observations, p. 20) *arising from the opposition of interest between the Director as an individual, and as a Trustee for the Company*, was urged by Mr. Twining, in his printed Speech, and is answered by me in a note, p. 25, and in page 45, by shewing, that the case can scarcely ever occur; that if it does, any breach of the trust must be open to immediate and certain detection; that the temptation is totally inadequate to the risque and the advantage; that there are existing checks enough to prevent its ever being attempted, and adequate existing remedies if it ever were attempted; and, lastly, that in the experience of 100 years, no such abuse has ever been practised, though it has heretofore been more practicable than it now is.

The next argument, page 21, is *the opportunities which a Director possesses of obtaining superior information*. This I have answered in a Note, page 2, and in page 40, by shewing that there is no secrecy in the Company's commercial concerns, which secrecy could alone furnish any such opportunities; and Sir Francis Baring, in his Speech, (see Woodfall's Debates, p. 37,) confirms my Answer in these words: "A person who
" can suppose that a Director can obtain pre-
" ferences, privileges, or superior information,
" over any other Merchants, is totally ignorant

“ of the practice of the East-India House, and
 “ of the publicity with which every part of the
 “ Company’s commercial concerns are trans-
 “ acted.” Which assertion, as it was not con-
 troverted by any one Director, must be understood
 to be admitted by all.

With respect to the argument in page 23 and
 24, arising from *the difficulty of Directors commu-
 nicating with each other upon the improvement of
 the Company’s commerce, if any Directors trade
 themselves*, it is well known that the trade is al-
 most invariably regulated by the indents, and
 any alteration that takes place, proceeds from the
 report of the officers who superintend the sales,
 or from the suggestions of the principal buyers,
 and not from the Directors. This is stated by
 me, page 42, and 43, and towards the close of
 the Appendix.

The argument respecting *the objection to a Di-
 rector, who is an Agent sitting in judgment upon his
 Constituent, arising from the connexion of interest
 between them*, was made use of by Mr. Twining,
 in his printed Speech, page 33, and is answered
 by me, page 21.

Mr. Twining asks, Why the Proprietors should
 be required to *confer* upon the Directors this
 right? It is already conferred upon them by Par-
 liament; and in the latter end of my Preface, I
 have

have adduced some reasons why, having been so conferred, it ought not now to be taken away.

The next argument respecting *the injustice that will result to private traders from their competition with Directors* is certainly new, and it is surprising if there were any injury or injustice likely to result to them, that it should be so, and that the delicacy of these Gentlemen should so far exceed the delicacy of other Gentlemen interested in the same question, that no one syllable was before ever brought forward, either by themselves or by any other person on their behalf; and it is also surprising, that having been in possession of the right to trade for two seasons, no one of them has ever attempted to exercise it, or to state why he did not. In point of fact no injustice has been done these Gentlemen; because they are in possession of all the right which was intended to be given them by the Act of Parliament—an equal right of trading to and from India, in common with every other British Subject.

The last argument renewed by Mr. Twining is *the hardship which the Captains and Officers of Ships would suffer from a competition in trade with East-India Directors*;—it is shewn in my Answer, page 44, that the rivalship, if it existed, would operate considerably to the prejudice of the Directors,

from their competitors paying no freight, no commission, and being on the spot to attend to their own concerns; and it is more fully and forcibly shewn by Sir Francis Baring, page 38, in Woodfall's Debates.

I come now to Mr. Twining's assertions.

He observes, that he is made by Mr. Woodfall to say, "that he knew nothing of what passed in "the Court of Directors, respecting the two Resolutions concerning Mr. Scott;" and asserts *that he did not say any such thing.*

Considering Mr. Twining did not say any such thing, it is rather surprizing that four Proprietors should have noticed any such thing *; and that Mr. Woodfall should have been so consistently inaccurate as to report, in his Account of the Debate, not only the above expression, but also the observations made by these four different gentlemen upon it. Mr. Twining, to have been equally consistent, should have denied that these remarks were made, or else have explained why he was not astonished at hearing Gentlemen take notice of what he never said; and why, when the notice was taken, he did not correct their misapprehension.

* See Woodfall's Debate. Mr. Serjeant Watson, page 8. Mr. Scott and Mr. Tolfrey, page 9; and Sir Francis Baring, page 35.

Mr.

Mr. Twining next states, *that he never heard a Motion made by Mr. Serjeant Watson, and attributed to him in Mr. Woodfall's Debate, page 92, and asserts, that he never did accede to the whole, or any thing like the whole, of the learned Serjeant's statement.*

This Motion, and Mr. Twining's Speech, thus denied, are also stated by me in my Preface, page 5, printed before Woodfall's Debates were published. The two accounts, although not in the very same words, are in substance precisely the same. Mr. Serjeant Watson does not speak so indistinctly, or in so feeble a tone of voice, as not to be heard; and if Mr. Woodfall heard him, who was at the further end of the Court-Room, it is highly probable that most of the Proprietors did. That he *did* hear this part of the Debate, few Gentlemen will need any other proof than his having reported it; for though he pre-eminently possesses the gift of memory, it has not heretofore been ascribed to him to have carried that faculty to the extent of recollecting what was never said.

Mr. Twining next asserts, that it is the object of his opponents to draw the attention of the Proprietors from the principal subject to his inaccuracies and personalities. These certainly did not escape the observations of his opponents;
and

and Mr. Twining seems to feel, and even to acknowledge, that they have been made with some degree of success. It is, however, a little unfair to suggest to the Proprietors, that his opponents have exclusively attended to these circumstances, when his two propositions on the General Subject have been taken and discussed in the * very terms in which he stated them, and every argument he adduced in support of them separately considered. Mr. Twining's inaccuracies, however, (among which may be reckoned the whole of his personalities) are some of them the strongest grounds of his principal Subject; and it is evident he feels them to be so, because, having been compelled to abandon them *in one shape*, he has, at this late day, brought them forward *in another*. His opponents are therefore compelled to notice them, that they may not leave him the advantage of undenied, though unfounded assertions.

* In consequence of an observation I made respecting the terms of one of these Propositions, "that acting as Agents *is* no private commerce," Mr. Twining says, he is persuaded that those Directors, who have acted as Agents, will not rest their defence upon such a plea as this—they certainly will not, nor have I rested their defence on any such plea, or even made use of it as an argument. I merely pointed out the expression, "trading as Agents," to be inaccurate as part of the terms of the Proposition, but I answered the Proposition as it was stated by Mr. Twining.

With

With respect to the present Oath of Directors, Mr. Twining at first asserted, that a different Oath had been agreed to, and that this Oath had never been agreed to by the Proprietors; and he insinuated, that some one Director had altered the Oath to answer a sinister purpose. The Letter of Mr. Smith, and the Resolutions of the Court of Directors, having driven him from this ground, he has taken post upon another, and, acquitting the Directors, he now asserts, *that the Oath, after having been agreed to by the Proprietors with peculiar satisfaction on the 16th, was altered in Parliament on the 17th of May*; and he re-asserts, that it was so altered without the consent or knowledge of the Court of Directors, or of the Court of Proprietors *. It will only, I trust,

* The difficult question still recurs, Who has done this; and with what view? for there is no act without some agent, nor so daring an act, without some powerful motive. This agent, whoever he may be, who has taken the trouble, and risked the odium of this measure, for the disinterested purpose of conferring on the Directors a lucrative right, without their own knowledge, is not, however, entitled to the exclusive blame. The whole Court of Directors must share it with their unknown Patron; for if they have suffered a material Clause to be altered in Parliament, without their own concurrence, they have not done their duty; and if with their concurrence, and without the concurrence of the Proprietors, they have been guilty of a serious breach of their duty.

be

be necessary, to remind the Proprietors who are the opponents that contradict Mr. Twining's account of this transaction, both as it is given in his old and new History. By Woodfall's report of the debate they will be found to be; Mr. Henchman, who proposed the new Oath*; the Company's Law Officers, who drew and revised it; Sir Francis Baring, their Chairman, during the negotiation; Mr. Serjeant Watson, who attended to its progress, both in the Courts of Proprietors, and in Parliament; Woodfall's report of the debates, pending the negotiation, and respecting the Clause M M; and the public Records of the Company, and of Parliament†. If these concurrent testimonies are in the right, Mr.

* Mr. Henchman's doubt, adverted to by Mr. Twining, was, whether the right to trade did not depend on locality of residence, not as he has stated it, whether the right existed. This doubt (which was answered by Mr. Rous) was founded upon another Clause of the Bill (the 81st), and yet is made by Mr. Twining to refer to the Clause of the Oath, and to be general, "Whether any persons residing within his Majesty's British dominions could export goods to India in the Capacity of an Agent?" A comparison of Mr. Twining's construction of what Mr. Henchman has said with that Gentleman's speech, is all that any Proprietor will require to satisfy himself on this subject.

† See Mr. Smith's Letter, and the Resolutions, page 11 and 16 of Answer. Mr. Henchman's Speech-Debates, p. 41. Serjeant Watson's, page 69. Sir Francis Baring's, page 81. Woodfall's debates during the negotiation, respecting the Clause M. M. page 118.

Twining

Twining is in the wrong; for by these authorities, it will appear, that the Clause M M was not a part of the Bill on which the Proprietors expressed their peculiar satisfaction on the 16th, that Clause having been previous to the expressing of such satisfaction struck out of the Bill, and it will appear that the Oath was not altered in Parliament; that it was officially altered by the Company's Solicitor, with the approbation of Mr. Henchman; that it was revised by Mr. Rouse; that it was afterwards read and considered, first in a Committee of Correspondence, and then in a Court of Directors; that it was transmitted by the Court of Directors to the House of Commons, and introduced into the Bill in the form it now stands, without any alteration, and that after having been so introduced, it was read and approved in the Court of Proprietors, on the 23d of May.

It is remarkable that Mr. Twining, notwithstanding it has been clearly pointed out to him, that the Directors right to trade in common with every other British subject, depends on the 81st Clause (See Answer, page 52.) and is expressed to do so by the Attorney and Solicitor-General, and by Mr. Rous, should persevere in deriving this right from the Oath, and the Oath alone. He has never attempted to prove, nor even to assert,

assert, that the 81st Clause, which actually does create this right, was, without deliberation and previous concurrence, introduced into the Act of Parliament. If then the want of this previous deliberation and concurrence is to be any plea for depriving the Directors of their right, and that plea has no other support than the imputed occurrences respecting the Oath, these occurrences might, for the sake of argument, be all admitted, and the grounds in support of the right, as founded upon the concurrence of the Proprietors, and the sanction of the Legislature remain unshaken.

Having now disposed both of Mr. Twining's arguments and his assertions; having endeavoured to shew that the first are inconclusive, and the latter unfounded; I trust it is not assuming too much to hope, that a body of enlightened Proprietors will not, on such grounds, be inclined to deprive their Directors of a right they have so lately consented to give them, and which Parliament has so recently sanctioned. A right which they only possess in common with every other British subject; more especially when such a deprivation must presuppose a probable gross breach of trust, and a violation of their oath, to be faithful to the Company; and cannot be effected without

without that undeserved censure which the necessity of imposing such a restriction unavoidably carries with it; nor without depriving the Company of the talents and experience of many Gentlemen, who have served them long, ably, and faithfully.

THE END.

without that unaltered centre which the paper
gives it, imposing such a restriction unavailing-
ly on the artist's freedom of expression. The Com-
pany of the Bank of England, who have the ex-
perience of many years, and who have long sold
and faithfully.



THE END.

